

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

OTIS LEE WINDHAM, #61358

PETITIONER

VERSUS

CIVIL ACTION NO. 4:07cv94-DPJ-JCS

CHRISTOPHER EPPS, *et al.*

RESPONDENTS

ORDER

This matter comes before this court, *sua sponte*, for consideration of the transfer of this cause. The petitioner, an inmate currently incarcerated in the Mississippi State Penitentiary, Parchman, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner states that he was convicted of murder in the Circuit Court of Kemper County, Mississippi. He was then sentenced to serve a term of life in the custody of the Mississippi Department of Corrections.

The petitioner has previously filed for habeas relief in this court challenging the same conviction, *Windham v. Hargett*, 4:95cv50LN (S.D. Miss. Dec. 21, 1995). On December 21, 1995, this court entered a final judgment dismissing the action with prejudice. The petitioner filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit on January 10, 1996. Subsequently, the Fifth Circuit dismissed his appeal for want of prosecution for failure of appellant to file a brief in a timely manner. *Windham v. Hargett*, No. 96-60033 (5th Cir. April 26, 1996).

A petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). In the case at bar, the petitioner has

failed to submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit. Therefore, this court has determined that in the interest of justice this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997); 28 U.S.C. § 1631. Accordingly, it is hereby,

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the clerk of this court terminate all pending motions and close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED AND ADJUDGED this the 22th day of August, 2007.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE